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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1915.

No. 495

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
Plaintiff in Error,

vs.

STATE PUBLIC UTILITIES COMMISSION OF ILLINOIS,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF AND ARGUMENT ON BEHALF OF PLAINTIFF IN ERROR FILED IN OPPOSITION TO MOTIONS TO DISMISS OR AFFIRM OR TRANSFER TO SUMMARY DOCKET.

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Attorneys for Plaintiff in Error.

BURTHORP-WARREN PRINTING COMPANY, CHICAGO.

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List of Authorities Cited.

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STATEMENT OF THE CASE.

MAY IT PLEASE THE COURT:

The Illinois Commission, by the order complained of, reduced by 50 per cent. a factor of a through rate common to interstate and intrastate traffic on a record which was passed upon by the Interstate Commerce Commission and held insufficient to warrant any reduction in that factor.

The rate ordered reduced applies to that portion of the through hauls which lies between Chicago, Illinois, and

Morton Grove, Illinois, and for which the plaintiff in error makes a charge of forty cents per ton on carload shipments of coal which are moved as far as Chicago on proportional rates applicable from points of origin in Illinois, Indiana, Ohio and certain other States.

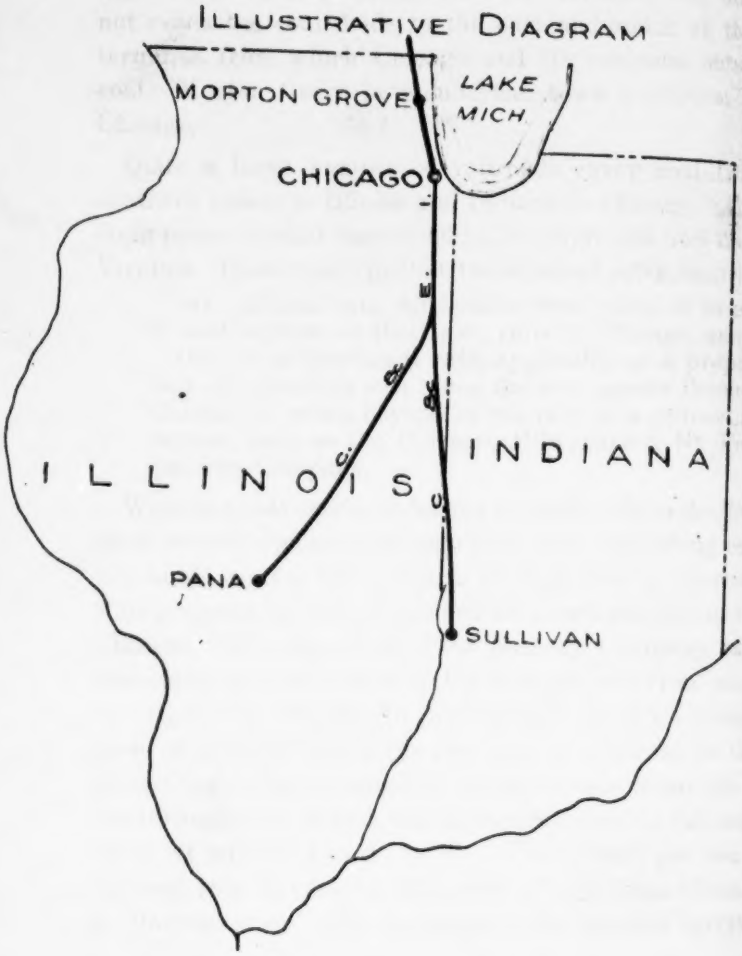
The Chicago, Milwaukee & St. Paul Railway Company has its eastern terminus at Chicago. It, therefore, does not reach the coal fields to the east and south of that terminus from which Chicago and its environs obtain coal. Morton Grove is a suburban town northwest of Chicago.

Quite a large number of railroads carry coal from southern points in Illinois and Indiana to Chicago. Also from points farther east, in Ohio, Pennsylvania and West Virginia. Those roads publish two kinds of rates, namely:

(a) A local rate, applicable from point of origin to destinations on their own rails in Chicago, and

(b) A proportional rate, applicable as a proportion of a through rate when the coal passes through Chicago to points beyond on the rails of a connecting carrier, such as the Chicago, Milwaukee & St. Paul Railway Company.

When the coal moves under the through rate to destinations beyond Chicago, the charge of the originating carrier is ten cents a ton less than its local rate to Chicago. This proportional rate, combined with the local rate of the Chicago, Milwaukee & St. Paul Railway Company as a connecting carrier, makes up the through rate from point of origin, via Chicago, to destinations beyond Chicago, such as Morton Grove, the destination involved in this proceeding. The earnings of the Milwaukee Road out of the through rate on such coal movements, are its full local rates, as published in its tariffs. Forty cents per ton is its local rate on carload shipments of coal from Chicago to Morton Grove. The earnings of the inbound carriers



	DISTANCE	RATE PER TON
Pana to Morton Grove	217 Miles	$1.22

vary with the distances from Chicago of the points of origin. For the shorter hauls, which are from Indiana points of origin and Illinois points of origin, their earnings are the lowest. From West Virginia mines to Chicago the rate is $2.05 per ton.

To further illustrate this rate structure in its simpler aspects we submit the diagram on the adjoining page. The distance from Pana, Illinois, to Morton Grove, Illinois, is 217 miles. The through rate on coal, $1.22. From Sullivan, Indiana, to Morton Grove, the distance is 216 miles and the through rate, $1.27. The effect of the Illinois Commission's order here involved, is to reduce the rate on coal between Pana, Illinois, and Morton Grove, Illinois, to $1.02, which is 25 cents a ton less than the current rate from the Indiana point equally distant. The portion of the route marked in red on the diagram is over the rails of the Milwaukee Road and is common to all movements of coal to Morton Grove, whether they originate in Illinois, Indiana, Ohio, Pennsylvania or West Virginia, and whether they originate on the lines of the Chicago & Eastern Illinois Road, shown on the diagram, or on the lines of any of the many other roads that haul coal to Chicago from points in the States named.

It is the portion of the route between Chicago and Morton Grove, shown in red, on which the Illinois Commission ordered the fifty per cent. reduction in rate and on which the Interstate Commerce Commission held that the rate is not shown to be unreasonable and may not properly be regulated apart from the through rate as a whole.

The question passed upon in the order appealed from in this case was decided by the Interstate Commerce Commission on a complaint brought against the Chicago, Milwaukee & St. Paul Railway Company by Poehl-

mann Bros. Company, the same complainant that brought the complaint before the Illinois Railroad & Warehouse Commission which resulted in the order that is here being reviewed.

At the time the Interstate Commerce Commission took jurisdiction of this question, that Commission had before it the same evidence and in fact the same record that was before the Illinois Commission when it subsequently heard the case and entered the order appealed from. How the two Commissions happened to pass upon the same record, is explained by the fact that the record made before the Interstate Commerce Commission, in so far as facts and evidence are concerned, was, by agreement and stipulation between the parties, made the record before the Railroad & Warehouse Commission of the State of Illinois at the hearing before that body. (Rec., 19.)

There were added to the record before the Illinois Railroad & Warehouse Commission a few questions and answers not contained in the record before the Interstate Commerce Commission (Rec., 15 to 18), but those questions and answers in no way changed or modified any fact here involved and are in no part material to the issues before this court. The Interstate Commerce Commission held that the evidence was not sufficient to warrant a reduction in the rate that was reduced by the Illinois Commission acting on the same record. The Interstate Commerce Commission's decision is reported in *Poehlmann Bros. Company* v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89.

The Interstate Commerce Commission, in taking jurisdiction of the question involving the rate subsequently regulated by the Illinois Commission, found the rates from points of origin to destination, as published in the

carriers' tariff, to be "through rates," and held that the factor of the *through rates* which the Illinois Commission regulated, could not be regulated independent of or apart from a regulation of the through rate *as a whole.* Id., 92.

The tariffs on which the State Commission passed were constructed the same as those on which the Interstate Commerce Commission passed, and a through intrastate rate, from point of origin to destination, was involved in the same way as the one which the Interstate Commerce Commission held should be regulated as a whole and not by the regulation of a single factor thereof. (Rec., 2, 3, 11, 13, 14.)

Poehlmann Bros. Company is to be allowed reparation to the extent of 20 cents per ton on coal from Illinois points of origin if the order of the Illinois Commission is sustained, and Poehlmann Bros. Company is now buying substantially all of its coal in Illinois. (Rec., 15.) Prior to the time the Interstate Commerce Commission dismissed the complaint against the factor of the through rates, which the Illinois Commission reduced, Poehlmann Bros. Company received two-thirds of its coal over interstate routes from points east of Illinois. (Rec., 25.)

BRIEF OF ARGUMENT IN OPPOSITION TO MOTIONS TO DISMISS WRIT AND TO AFFIRM JUDGMENT.

The order of the Railroad and Warehouse Commission of the State of Illinois, the validity of which this court is asked to pass upon, is unlawful in the following particulars:

(a) The order is unlawful in that it is a regulation by the Illinois Commission of a factor of a through rate which is common to interstate and intrastate traffic contrary to and in conflict with its regulation by the Interstate Commerce Commission on the same state of facts and on the same record.

(b) The order is unlawful in that it expresses assumed jurisdiction by the Illinois Commission of a rate question over which the Interstate Commerce Commission had assumed jurisdiction under the Act to Regulate Commerce.

(c) The order is unlawful in that it requires the plaintiff in error, as a common carrier, to discriminate against localities outside the State of Illinois and grant unlawful preferences to localities within the State of Illinois.

(d) The order would interfere with and place a burden upon interstate commerce, and the agencies of interstate commerce, since in passing on precisely the same service that the Interstate Commerce Commission passed upon, and considering the same state of facts on the same record, the Illinois Commission denies the plaintiff in error the right to make a charge for service common to interstate and intrastate traffic which the Interstate Commerce Commission held was not shown by that record to be unreasonable or discriminatory.

(e) The order requires plaintiff in error to perform service for intrastate coal shippers at one-half what the Interstate Commerce Commission has held

on the same record is not shown to be an unreasonable rate to charge for the identical service rendered on interstate coal shipments.

(f) The order would have the effect of regulating interstate traffic through coercing plaintiff in error to change a factor of an interstate rate (which the Interstate Commerce Commission has held not to have been shown unreasonable or discriminatory) to avoid the discrimination resulting from the order.

(g) The order would result in unlawful discrimination against interstate shippers of coal and would result in extending unlawful preferences to their competitors who ship intrastate to the same destination on the railroad of plaintiff in error.

(h) The order would result in unlawful discrimination against interstate commerce and in granting unlawful preferment to state commerce.

(i) The burden of proof rested upon the complainant before the Illinois Commission and the laws applicable indulged complainant in no presumptions that would supply the place of the necessary evidence which the Interstate Commerce Commission found wanting in this record.

(j) The order of the Illinois Commission is not a regulation of the through rate, but is the fixing of divisions as between the carriers participating in the through rate, where the carriers had not failed to agree on divisions, had not asked the Commission to fix divisions, and where the Commission had no statutory power to fix divisions as between carriers.

(k) This case is distinguishable from the Minnesota Rate Case for the reason, among others, that in the case at bar the Interstate Commerce Commission had taken jurisdiction of, and heard evidence on, and adopted a policy in regard to, the compensation of the carrier for the identical service on which the State Commission directed a reduction in the carrier's earnings in an order that is in conflict with the action of the Interstate Commerce Commission. In the Minnesota Rate Case the Interstate Commerce Commission had not taken action or entered an order

in respect of the compensation involved or in respect of the record on which the state rate was fixed. There was not conflict between the Federal authority and the State authority arising from an identical state of facts in the Minnesota Case.

If the foregoing propositions are supported by the record before this court, as we contend they are, this is not a cause to be summarily dismissed as one over which this court has no jurisdiction nor should the judgment be peremptorily affirmed as in cases where the writ is frivolous and brought only for delay.

BRIEF OF LAW POINTS AND AUTHORITIES.

I.

The Federal Government had taken jurisdiction of the rate and railroad service here involved on October 26, 1912, which was prior to the attempted regulation by the Illinois Commission, on October 25, 1913, that resulted in the order complained of.

Poehlmann Bros. Co. v. *C. M. & St. P. Ry. Co.*, 30 I. C. C., 89.

II.

"There is no room in our scheme of Government for the assertion of State power in hostility to the authorized exercise of Federal power. The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations."

Minnesota Rate Cases, 230 U. S., 352, 399.

See also:

Mondou v. *N. Y. N. H. & H. R. R. Co.*, 223 U. S., 1, 47, 54, 55.

III.

"In matters, admitting of diversity of treatment according to the special requirements of local conditions, the States may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting State regulation."

Minnesota Rate Cases, 230 U. S., 352, 399, 400.

See also:

So. Ry. Co. v. *Reid,* 222 U. S., 424, 436.
Northern Pac. Ry. Co. v. *Washington,* 222 U. S., 370, 378.
Gulf, Colorado & Santa Fe Ry. Co. v. *Hefley,* 158 U. S., 98, 103, 104.
Bowman v. *C. & N. W. Ry. Co.,* 125 U. S., 465, 481, 485.
Gloucester Ferry Co. v. *Pennsylvania,* 114 U. S., 196, 204.
County of Mobile v. *Kimball,* 102 U. S., 691, 697.
Welton v. *Missouri,* 91 U. S., 275, 280.
Ex parte McNiel, 13 Wall., 236, 240.
Cooley v. *Board of Wardens,* 12 How., 299, 319.

IV.

A State exceeds its lawful authority when it attempts to regulate rates applicable on interstate commerce or to subject the operation of carriers in the course of such transportation to requirements that are unreasonable or pass beyond the bounds of suitable local protection.

Minnesota Rate Cases, 230 U. S., 352, 401.

See also:

Yazoo & Miss. Valley R. Co. v. *Greenwood Grocery Co.,* 227 U. S., 1.
Texas & N. O. R. R. v. *Sabine Tram Co.,* 227 U. S., 111.
R. R. Commission of Ohio v. *Worthington,* 225 U. S., 101.
Herndon v. *C. R. I. & P. R. R. Co.,* 218 U. S., 135.
St. Louis S. W. Ry. Co. v. *Arkansas,* 217 U. S., 136.

Houston & T. C. R. R. Co. v. *Mayes*, 210 U. S., 321.
Atlantic Coast Line v. *Wharton*, 207 U. S., 328.
Miss. R. R. Commission v. *I. C. R. R. Co.*, 203 U. S., 335.
McNeill v. *So. Ry. Co.*, 202 U. S., 543.
Hanley v. *K. C. So. Ry. Co.*, 187 U. S., 617.
Louisville & Nashville R. R. Co. v. *Eubank*, 184 U. S., 27.
C. C. C. & St. L. Ry. Co. v. *Illinois*, 177 U. S., 514.
Covington Bridge Co. v. *Kentucky*, 154 U. S., 204.
Wabash Ry. Co. v. *Illinois*, 118 U. S., 557, 577.
Hall v. *Decuir*, 95 U. S., 485, 488.

V.

The Interstate Commerce Commission is clothed with power, granted by Congress through the Act to Regulate Commerce, passed under authority of the Commerce Clause of the Constitution, which power is adequate to meet the varying exigencies that arise and to protect the national interests by securing the freedom of interstate commercial intercourse from local control.

Houston East & West Texas Ry. Co. v. *U. S.* and *Texas & Pacific Ry. Co.* v. *U. S.* (Shreveport Case), 234 U. S., 342, 350, 351.

See also:

Minnesota Rate Cases, 230 U. S., 352, 398, 399.
Second Employers' Liability Cases, 223 U. S., 1, 47, 53, 54.
Smith v. *Alabama*, 124 U. S., 465, 473.

County of Mobile v. *Kimball*, 102 U. S., 691, 696, 697.

Brown v. *Maryland*, 12 Wheat., 419, 446.

Gibbons v. *Ogden*, 9 Wheat., 1, 196, 224.

VI.

The authority of Congress, exercised through the Interstate Commerce Commission, extends to interstate common carriers as instruments of interstate commerce in such way as necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance.

Texas & Pacific Ry. Co. v. *U. S.*, 234 U. S., 342, 351.

VII.

"The power to deal with the relation between two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the State cannot fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, unless it simply follows the standard set by Federal authority."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 354.

See also:

L. & N. R. R. v. *Eubank*, 184 U. S., 27.

VIII.

"That an unjust discrimination in the rates of a common carrier, by which one person or locality is unduly favored as against another under substantially similar conditions of traffic, constitutes an evil is undeniable; and where this evil consists in the action of an interstate carrier in unreasonably discriminating against interstate traffic over its line, the authority of Congress to prevent it is equally clear. It is immaterial, so far as the protecting power of Congress is concerned, that the discrimination arises from intrastate rates as compared with interstate rates. The use of the instrument of interstate commerce in a discriminatory manner so as to inflict injury upon that commerce, or some part thereof, furnishes abundant ground for Federal intervention. Nor can the attempted exercise of state authority alter the matter, where Congress has acted, for a State may not authorize the carrier to do that which Congress is entitled to forbid and has forbidden."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 354.

IX.

"It is also clear that, in removing the injurious discriminations against interstate traffic arising from the relation of intrastate to interstate rates, Congress is not bound to reduce the latter below what it may deem to be a proper standard fair to the carrier and to the public. Otherwise, it could prevent the injury to interstate commerce only by the sacrifice of its judgment as to interstate rates. Congress is entitled to maintain its own standard as to these rates and to forbid any discriminatory action by interstate carriers which will obstruct the freedom of movement of interstate traffic over their lines in accordance with the terms it establishes."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 355.

X.

"Wherever the interstate and intrastate transactions of carriers are so related that the Government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 351, 352.

See also:

Illinois Central R. R. Co. v. *Behrens*, 233 U. S., 473.

Interstate Commerce Commission v. *Goodrich Transit Company*, 224 U. S., 194, 205, 213.

Second Employers' Liability Cases, 223 U. S., 1, 48, 51.

Southern Railway Co. v. *U. S.*, 222 U. S., 20, 26, 27.

B. & O. R. R. Co. v. *Interstate Commerce Commission*, 221 U. S., 612, 618.

XI.

"The fact that carriers are instruments of intrastate commerce as well as of interstate commerce does not derogate from the complete and paramount authority of Congress over the latter or preclude the Federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to the Federal care."

Houston & Texas Ry. v. *U. S.*, 234 U. S., 342, 351.

XII.

This court has several times recognized in its opinions that the work of solving the details and intricacies of rate regulation has been delegated by Congress to the Interstate Commerce Commission, and this court has held that acting within that field the Interstate Commerce Commission is supreme and its acts are not reviewable here except where the Commission exceeds its authority or otherwise fails to conform to the requirements or the limitations of the Act to Regulate Commerce.

Interstate Commerce Commission v. *I. C. R. R. Co.*, 215 U. S., 452.

B. & O. R. R. Co. v. *Pitcairn Coal Co.*, 215 U. S., 481.

Southern Pacific Co. v. *I. C. C.*, 219 U. S., 433.

XIII.

The Interstate Commerce Commission, having examined this record and found the facts insufficient to warrant a reduction of the rate for the service here involved, the Illinois Commission may not, under the law, deduce a different conclusion from the same facts and enter a regulative order founded on what the Interstate Commerce Commission has declared to be insufficient evidence to support such order.

Interstate Commerce Commission v. *L. & N. R. R. Co.*, 227 U. S., 88, 91.

XIV.

Plaintiff in error exhausted its means of remedy in the State tribunals without gaining relief.

C. M. & St. P. Ry. Co. v. *Public Utilities Commission*, 268 Ill., 49.

ARGUMENT.

I.

REASONS WHY THE WRIT OF ERROR SHOULD NOT BE DISMISSED ON MOTION OF DEFENDANT IN ERROR FOR ALLEGED LACK OF JURISDICTION.

The undisputed facts establish that the Chicago, Milwaukee & St. Paul Railway Company, plaintiff in error, is a common carrier subject to the Act to Regulate Commerce; that as such common carrier the reasonableness of its rates and charges, for service in the transportation of coal, in carloads, delivered by it at Morton Grove and received by it from connecting carriers in Chicago, was passed upon by the Interstate Commerce Commission on the same record, so far as evidence and admissions are concerned, that is involved in this proceeding; that the Interstate Commerce Commission held on this record:

(1) That the evidence was of such an unsatisfactory character and so insufficient that the complaint was not sustained.

(2) That the rates from Chicago to northern suburban points, such as the one here involved, are a part of a complex rate situation that cannot be properly adjusted as a portion of a through rate without the adjustment of the through rate as a whole.

(3) That the rate here in question is a part of a through rate and as such must be regulated as a through rate and not independently of the through rate.

(4) That the complaint must be dismissed, both for lack of sufficient evidence to warrant the reduction prayed for and because it seeks to have regulated one factor of a through rate only.

The opinion of the Interstate Commerce Commission is reported in *Poehlmann Bros. Company* v. *C. M. & St.*

P. Ry. Co., 30 I. C. C., 89. The following language is quoted from page 92:

"While, as stated, only the delivering line is made a party defendant, the comparisons made by complainant are nearly all with respect to through rates, or factors of through rates, from points of origin to destinations within, or just beyond, the Chicago switching district. The adjustment of rates within this general district is an exceedingly complex one. Ordinary prudence dictates that we should not prescribe a change in this adjustment, or require a reduction in any specific rate therein, except after careful examination of all the facts, both with respect to the rate itself and also its relation to the general adjustment.

Upon the record it clearly appears that complainant is not discriminated against by defendant.

The traffic in question is through traffic. The rate specifically attacked, although a separately established rate of the delivering line, cannot be considered entirely apart from its relationship to the through rate for the through haul from interstate points of origin. Some regard must be had to the measure of the through rate as an entirety, and neither the through rate nor the carriers responsible for it and participating in it are before us in this proceeding.

Considering the absence of evidence as to the reasonableness of the through rate, and the unsatisfactory evidence as to the separately established rate under attack, we must refrain from expressing any conclusion upon the reasonableness of either rate. The complaint must be dismissed, and it will be so ordered."

This court has several times recognized in its opinions that the work of solving the details and intricacies of rate regulation has been delegated by Congress to the Interstate Commerce Commission, and this court has held that acting within that field the Interstate Commerce Commission is supreme and its acts are not reviewable here except where the Commission exceeds its authority

or otherwise fails to conform to the requirements or the limitations of the Act to Regulate Commerce.

Interstate Commerce Commission v. *I. C. R. R. Co.*, 215 U. S., 452.

B. & O. R. R. Co. v. *Pitcairn Coal Co.*, 215 U. S., 481.

Southern Pacific Co. v. *I. C. C.*, 219 U. S., 433.

The Interstate Commerce Commission, in the exercise of its sound judgment and discretion within the field where it is supreme, declared that there was insufficient evidence in the present record to warrant a reduction or other regulation of the rate which the State Commission reduced. When the Interstate Commerce Commission found the evidence was insufficient to warrant a reduction in the rate, it was powerless, under the Act, to reduce it.

This court said, in *Interstate Commerce Commission* v. *L. & N. R. R. Co.*, 227 U. S., 88, 91:

> "The statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless. * * * It would mean that where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another; is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power."

The Interstate Commerce Commission, in passing upon the facts in this case, was governed by the law outlined in the foregoing quotation. It declined to disregard all rules of evidence and capriciously make findings by administrative fiat. Under such circumstances, we are apparently forced to the conclusion that the Illinois Com-

mission's order is merely administrative fiat. To reason otherwise is to argue that the Interstate Commerce Commission's judgment is wrong within the peculiar province where its judgment is conclusive.

Clearly a conflict between Federal authority and State authority, or assumed State authority, is presented. That this court has jurisdiction to determine whether an order of a State Regulating Body invades the province of the Interstate Commerce Commission, contrary to the Commerce Clause of the Federal Constitution and the laws passed thereunder, is not a subject that requires argument.

II.

REASONS WHY THE JUDGMENT SHOULD NOT BE AFFIRMED ON THE THEORY THAT THE WRIT IS FRIVOLOUS, WITHOUT MERIT, AND MERELY BROUGHT FOR DELAY.

We present to this court a question of unusual gravity and importance that has arisen under the Act to Regulate Commerce as amended. The question is somewhat analogous to the central questions involved in the *Minnesota Rate Case*, 230 U. S., 352, and in the so-called Shreveport Case, *T. & P. Ry. Co.* v. *U. S.*, 234 U. S., 342.

This court is asked to say whether the general principle of law declared in the Shreveport Case should control in cases involving facts and conditions such as are presented by this record.

The amendment to the Act to Regulate Commerce, under which the central question here presented has arisen, is relatively new. Sufficient time has not elapsed since its adoption to bring before this court many of the academic questions of broad and general application that must, in the course of time, be finally dealt with here.

This court has not yet declared whether a common carrier, subject to the Act to Regulate Commerce, must submit to having its rates and earnings reduced by State authority for a service applicable alike to interstate and intrastate transportation when the Interstate Commerce Commission has already passed on the same state of facts in the same record and held the facts insufficient to support an order reducing the rates.

This court has not yet said whether, under the conditions referred to in the preceding paragraph, the carrier can be forced by the action of a State Commission to reduce its charges for interstate carriage that the Interstate Commerce Commission has held not to have been shown unreasonable or be forced to the alternative of charging 100 per cent. more to the interstate shipper than the State Commission allows it to charge the intrastate shipper for that part of the service that is common to both.

This court has not yet said that the action of the Interstate Commerce Commission must be regarded as conclusive and preclude contrary action by a State Commission when the former holds that a through rate, one factor of which is common to interstate as well as intrastate traffic, must be regulated as a whole instead of merely by regulating the one factor thereof which is common to interstate and intrastate traffic.

These are all questions entailing the construction of the Federal Act to Regulate Commerce that can only be finally determined by this court, which of itself should be sufficient answer to defendant in error's motion for a dismissal on the alleged ground that the writ is devoid of merit and brought only for delay.

Aside from the foregoing generic reasons why this cause should have the benefit of the full consideration and

deliberate judgment of this court, rather than a peremptory dismissal, we urge the following specific reasons:

The complainant has proved that to give effect to the Illinois Commission's order is to burden interstate commerce, to discriminate against localities and shippers in other States, to give undue preference to localities and shippers in Illinois and to deprive the interstate carrier of interstate commerce that it has enjoyed and will continue to enjoy if the ruling of the Interstate Commerce Commission stands as controlling and conclusive and unimpaired by the conflicting ruling of the State Commission.

At the hearing before the Interstate Commerce Commission, June 14th, 1912, Mr. Poehlmann testified that Poehlmann Bros. Company consumed approximately 30,000 tons of coal a year at its Morton Grove Plant and that two-thirds of that quantity of coal came from points of origin outside the State of Illinois. (Rec., 24, 25.) The same witness, testifying before the Illinois Commission in 1914, testified as follows:

"Q. About how many tons of coal a year do you consume in your business?

A. Approximately 30,000.

Q. What portion of your coal comes from mines in the State of Illinois?

A. At the present time almost all of it." (Rec., 15.)

It is obvious that Mr. Poehlmann was figuring on reparation benefits derivable from a decision by the Illinois Commission that would place a rate penalty on interstate coal and allow reparation on intrastate coal where the interstate basis in effect was charged for the portion of the haul which was common to interstate and intrastate service—the portion shown in red on the diagram opposite page 3, *supra*.

The rate which the plaintiff in error may charge for

hauling carload shipments of coal from Chicago to Morton Grove is forty cents per ton when the coal comes from Indiana or points east and southeast of Illinois. Under the Illinois Commission's order the plaintiff in error can charge only twenty cents per ton for identically the same service. Formerly 20,000 of the 30,000 tons consumed by Poehlmann Bros. Company came from interstate points of origin each year. Plaintiff in error earned $8,000 for its service in transporting over its portion of the haul that quantity of coal. The same coal is now being transported from points of origin in Illinois, and while plaintiff in error at present is collecting forty cents per ton on these Illinois shipments, it can only retain one-half of that amount, or twenty cents per ton, if the order of the Illinois Commission is held valid. The other twenty cents per ton, or $4,000 per year, must be paid back to Poehlmann Bros. Company if the order of the Illinois Commission is sustained in this court.

Referring again to the illustrative diagram opposite page 3, *supra*, the coal mine at Sullivan, Indiana, could no longer compete with the coal mine at Pana, Illinois, in supplying coal consumption at Morton Grove, for while the points are virtually equi-distant from Morton Grove, and while their rates would be nearly the same as far as Chicago, under the Illinois Commission's regulation the carrier is left to charge 100 per cent. more from Chicago to Morton Grove on the Indiana coal than on the Illinois coal. The only escape from this is for the interstate carrier to bow to the authority of the State Commission and reduce its interstate rate to conform to the rate prescribed by the State Commission for identically the same service on intrastate shipments. This would, of course, be in reality the regulation of interstate rates and charges by a State Commission.

III.

AS TO THE MOTION TO TRANSFER THIS CAUSE FOR HEARING ON THE SUMMARY DOCKET.

We are opposed to this motion only because we feel the importance of this case is such that it should not be summarily dealt with. Its importance to the plaintiff in error is not confined to merely the loss of $4,000 a year throughout the future in consequence of the application of a twenty-cent rate in lieu of a forty-cent rate on 20,000 tons of coal annually, for if Morton Grove is entitled to a reduction of 50 per cent., so are the stations north and south of it on the plaintiff in error's railroad. Also, the City of Evanston and towns on that branch would be entitled to corresponding reductions. The same would be true of cities located between Chicago and Elgin, Illinois, on that line of this carrier's road and interstate commerce would have to suffer the unfair competition discussed in preceding pages, the only alternative being that this carrier might allow the State Regulating Body to control its interstate rates by voluntarily reducing them to conform with the rates fixed by the State.

Apart from the immediate interests of the plaintiff in error, outlined above, there is still the broader interest of interstate shippers of coal to be considered, for if they may be made the victims of discriminatory rates regulated by the State to an extent such that they are excluded from the Chicago market, purchasers of coal will, doubtless, change their patronage from mines in Indiana and other States east and south of Illinois to the Illinois mines as the record shows Poehlmann Bros. Company has done.

It should be borne in mind also that if the Illinois Com-

mission may regulate the rates of the Chicago, Milwaukee & St. Paul Railway Company, as a delivering carrier participating in the through movement of coal to points in Illinois north and west of Chicago, it necessarily follows that it may similarly regulate the rates of all other delivering carriers participating in through rates on coal delivered at points in Illinois on their rails north and west of Chicago. If a State Commission may interfere at Chicago with the rate adjustment in a way to discriminate against or control interstate rates, it follows that State Commissions may take similar action at various points and in various States.

For all of these reasons we submit that this case is of sufficient importance to be considered on the regular docket in the regular course and that it is altogether too important to be summarily disposed of in accordance with the pending motion of defendant in error.

IV.

THE SUFFICIENCY OF EVIDENCE AND SPECIFICATIONS OF ERRORS.

On page seven of opposing counsel's brief they say:

> "The question of the sufficiency of the evidence on which to base the order is not here for review. That question is not embraced in the specifications of errors, and is no longer open."

We dispute the correctness of the language quoted. The question we raise in this connection is embraced in the seventh, eighth and tenth specifications of errors. (Rec., 50, 51.)

The seventh specification of error relied upon is as follows:

> "7. The order of the Railroad and Warehouse Commission of the State of Illinois appealed from

in this case is unreasonable and unlawful in that without finding the through rate excessive or discriminatory and *without facts before it on which to make such finding,* it reduces, solely for the benefit of Illinois shippers and producers of coal, the charges for a factor of the service involved that is a common factor in interstate and Illinois movements of coal and which common factor the Interstate Commerce Commission had held, on the same record, was not shown to be subject to separate regulation, and the Supreme Court of Illinois erred in sustaining said order of said Railroad and Warehouse Commission."

The eighth and tenth specifications of errors present our contention that the Interstate Commerce Commission, having expressly found the evidence insufficient to warrant a reduction or regulation of a rate common to state and interstate traffic alike, it is beyond the power of the State Commission to overrule or nullify the conclusions of the Interstate Commerce Commission and regulate such a rate in its intrastate application and in a way that burdens or discriminates against interstate commerce.

The specifications of errors, above referred to, are pertinent to our contention that Congress, having declared through the Interstate Commerce Commission in what way and to what extent a given rate may or may not be regulated, the Illinois Commission, in dealing with the same rate in so far as both interstate and intrastate commerce may be affected by its action, must follow within the lines laid down by Federal authority. This court has so held in the following language:

"The power to deal with the relation between two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the State cannot fix the relation of the carrier's interstate and intrastate charges without directly interfering with the former, unless it simply follows the standard set by

Federal authority." (*Houston & Texas Ry. Co. v. U. S.*, 234 U. S., 342, 354.)

We ask that each of defendant in error's three pending motions be denied.

Respectfully submitted,

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